IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE KURIAN JOSEPH
&
THE HONOURABLE MR. JUSTICE HARUN-UL-RASHID

MONDAY, THE 5TH NOVEMBER 2007 / 14TH KARTHIKA 1929

LA.App..No. 978 of 2002(D)

LAR.96/2000 of III ADDL.SUB COURT, ERNAKULAM
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APPELLANT: CLAIMANT

RAJENDRAN, S/O. R.V.SABBU,
CHERUPARAMBATH THOPPIL, KADAVANTHARA,
ELAMKULAM.

BY ADV. SRI.VARGHESE PREM
SMT.K.C.BEENA (KOORAN)

RESPONDENTS: RESPONDENTS
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1. STATE OF KERALA, REPRESENTED BY GOVT.
PLEADER, ERNAKULAM.

2. THE AREA MARKETING MANAGER,
BHARATH PETROLEUM CORPORATION LTD.,
DR.SALIM ALI ROAD, ERNAKULAM.

BY GOVERNMENT PLEADER SRI.K.V.MANOJKUMAR.

THIS LAND ACQUISITION APPEAL HAVING BEEN FINALLY HEARD ON 05/11/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

KURIAN JOSEPH & HARUN-UL-RASHID, JJ.

L.A.A. NO.978 OF 2002

Dated 5th November, 2007.

J U D G M E N T

Harun-Ul-Rashid, J.

This is an appeal filed by the claimant in LAR No.96/2000 on the file of the III Additional Sub Court, Ernakulam. The extent acquired in this case is 1.57 Ares of land in survey No.500/42 of Elamkulam Village in Kanayannur Taluk. The acquisition is for the purpose of laying pipeline for the B.P.C.L. Section 4(1) notification was issued on 15.2.1997. The property was included in category No.II by the Land Acquisition Officer and awarded land value at the rate of Rs.2,44,600/- per Are.

2. Before the reference court, the appellant has filed a statement claiming Rs.5 lakhs per cent for the acquired land and also compensation under different heads. In support of the claim for enhanced compensation, the claimant produced Ext.A1 to A12 documents and examined PW1. On the side of the respondents, Ext.B1 mahazar and B2 notes on award were produced. No oral evidence was adduced on the side of the respondents. Ext.C1 commission report and Ext.C1(a) plan were also marked.

3. The reference court, relying on Ext.B1 mahazar and considering the distance of the acquired land and the basic land, held

that it cannot be said that the land acquisitioning authority acted unreasonably in valuing the acquired land by relying on the basic document and therefore, the court below further held that both lands are similar and similarly situated.

4. It is to be noted that the respondents did not produce the basic document and nobody was examined in support of their stand that the acquired land and the basic land are similar and comparable in all respects. Without the production of the basic document and without adducing any evidence as to the similarity and comparability of the basic land with the acquired land, the reference court was not correct in holding that the acquired land is similar and similarly situated as that of basic land.

5. Though enhanced compensation was claimed by the claimant for value of structures, damages for severance of the unacquired portion and for damages towards shifting, the reference court did not consider those issues. Learned counsel for the appellant/claimant contended that he has sustained severe damages owing to the acquisition and he is entitled to compensation under the heads of severance compensation, value of structures, shifting charges etc. and therefore, non-consideration of these aspects by the court below has resulted in serious injustice. The court below also has not examined the evidence of the claimant in support of the claim for

enhanced land value.

6. On an examination of the points raised in this appeal, we are of the view that reconsideration of the matter is necessary, in the light of the contentions and observations made above.

7. In the result, the judgment and decree under appeal are set aside, the matter is remitted to the reference court for denovo consideration. The parties shall appear before the court below on 10.12.2007. The parties shall be at liberty to adduce fresh evidence, if any. In view of the remand as above, the appellant/claimant shall be entitled to refund of the court fee.

KURIAN JOSEPH, JUDGE.

HARUN-UL-RASHID, JUDGE.

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KURIAN JOSEPH &

HARUN-UL-RASHID, JJ

L.A.A. NO.978 OF 2002

J U D G M E N T

Dated 5th November, 2007.